

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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JUN 23 1997

In the Matter of	)	
	)	WT Docket No. 97-82
Amendment to Part 1 of the	)	
Commission's Rules	)	DA 97-679
	)	
Competitive Bidding Proceedings	)	

Federal Communications Commission  
Office of Secretary

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**COMMENTS OF FORTUNET COMMUNICATIONS, L.P.**

Fortunet Communications, L.P. ("Fortunet"),<sup>1</sup> by its attorneys, submits the following comments in the above-captioned proceeding.

**I. INTRODUCTION**

On May 9, 1997, Fortunet requested relief from and/or waiver of certain of the Commission's requirements for C-Block PCS licensees and proposed several modifications to current C-Block licensing terms.<sup>2</sup> The Commission received several other requests for relief based on grounds similar to Fortunet's request.<sup>3</sup> The Wireless Telecommunications Bureau now has invited comment on the proposals raised in these requests and on any additional proposals regarding the financing of C-Block (and F-Block) PCS licenses.<sup>4</sup> Fortunet submits these

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<sup>1</sup> Fortunet is the successor to Fortunet Wireless Communications, L.P., Aer Force Communications, L.P., Southeast Wireless Communications, L.P., New England Wireless Communications, L.P., and High Country Communications, L.P.

<sup>2</sup> Letter from James H. Barker and Michael S. Wroblewski to William F. Caton, Secretary, Federal Communications Commission (May 9, 1997) ("Barker Letter").

<sup>3</sup> See Letters cited in notes 1, 4, 6, & 8 of *Public Notice*, *infra* note 4.

<sup>4</sup> Wireless Telecommunications Bureau Seeks Comment on Broadband PCS C and F Block Installment Payment Issues, *Public Notice*, DA 97-679 (June 2, 1997).

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comments to highlight the significant support that its proposals already have with respect to obtaining relief from current PCS C-Block financing terms, and respectfully urges the Commission to provide such relief.

## **II. BACKGROUND**

The financial difficulties currently faced by C-Block licensees stem directly from the obstacles that had to be overcome before the Commission could conduct the C-Block auction. The C-Block auction was designed to comply with the Congressional mandate to “ensure that small businesses, rural telephone companies, and business owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services.”<sup>5</sup> Congress enacted this mandate because it was “well aware of the difficulties these groups encounter in accessing capital.”<sup>6</sup>

Congressional recognition of the difficulties small businesses face in raising capital has special significance in the PCS arena. The wireless mobile services market is “highly competitive,” and the “costs of acquiring a license and constructing facilities are substantial.”<sup>7</sup> To provide small businesses with a chance to compete in this market, the Commission adopted an installment payment program for the C-Block PCS licenses. The installment program was designed to assist small businesses, who are “likely to have difficulty obtaining adequate private

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<sup>5</sup> 47 U.S.C. § 309(j)(4)(D).

<sup>6</sup> Implementation of Section 309(j) of the Communications Act - Competitive Bidding, *Fifth Report and Order*, PP Docket No. 93-253, FCC 94-178, at ¶ 97 (1994) (“*Fifth R&O*”)

<sup>7</sup> *Fifth R&O* at ¶ 111; see also *Omnipoint Corp. v. FCC*, 78 F.3d 620, 626 (D.C. Cir. 1996) (“[T]he primary impediment to participation by designated entities is a lack of access to capital.”).

financing,” by extending them credit in the event they won licenses in the C-Block auction.<sup>8</sup> In adopting the installment program and other preferences for small businesses, the Commission sought to “encourage the entry of” small businesses in the PCS market.”<sup>9</sup>

Unfortunately, subsequent events prevented competition in the PCS market from developing as the Commission intended. The auction for C-Block PCS licenses originally was scheduled for May 1995, just 2 months after the A- and B-Block auctions.<sup>10</sup> However, legal challenges to the Commission’s rules regarding the preferential treatment of women and minorities delayed the auction for several months. As a result, the C-Block auctions did not begin until December 18, 1995, and concluded on May 6, 1996.<sup>11</sup> It was not until September 17, 1996 that most of the winning bidders received their licenses,<sup>12</sup> over a full year after the A- and B-Block licenses were granted.<sup>13</sup>

The delay in the auctioning and granting of C-Block licenses has placed an enormous financial strain on C-Block licensees. Financial markets have tightened, making it increasingly difficult for C-Block licensees, who are disadvantaged in capital markets because of their smaller size, to raise sufficient financing to build out their networks. Moreover, the C-Block must compete for capital with the larger A- and B-Block licensees, most of whom are

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<sup>8</sup> Implementation of Section 309(j) of the Communications Act - Competitive Bidding, *Second Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 2348, at ¶ 233 (1994).

<sup>9</sup> *Fifth R&O* at ¶ 112.

<sup>10</sup> *Omnipoint Corp.*, 78 F.2d at 626.

<sup>11</sup> The Commission conducted a reauction between July 3 and July 16, 1996.

<sup>12</sup> FCC Announces Grant of Broadband Personal Communications Entrepreneurs' C Block BTA Licenses, DA 96-1553 (Sept. 17, 1996).

<sup>13</sup> Applications of A and B Block Broadband PCS Licenses, *Order*, DA 95-1411 (June 23, 1995).

owned by the nation's largest telecommunications companies, and which had over a year's head start because of the unexpected (and unintended) delays in conducting the C-Block auctions. In addition to these obstacles, the Commission's rules restrict the financing options available to C-Block licensees. The combination of these factors has severely affected C-Block licensees.

### **III. C-BLOCK LICENSES SHOULD BE REFINANCED TO PROMOTE CAPITAL INVESTMENT**

There is substantial support for proposals of the type that Fortunet made in its earlier letter to the Commission. These proposals are designed to promote the development of the C-Block through targeted relief that will encourage investment and facilitate timely system buildout. Specifically, the Commission should adopt the following policies:

#### 1. Suspension of interest payments

Fortunet agrees with MCI and General Wireless that the Commission should suspend the payment of interest until the fifth anniversary of the license grant.<sup>14</sup> The interest payments deferred then could be used to invest in C-Block infrastructure. When interest payments begin on the fifth anniversary, Fortunet should have a customer base and cash flow sufficient enough to fulfill its obligations to the Commission.

#### 2. Extension of repayment term

Fortunet also agrees with General Wireless that the repayment term should be extended.<sup>15</sup> Extending the repayment term reduces the amount of the installment payment, which increases the funds available for investment and encourages the contribution of capital

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<sup>14</sup> Barker Letter at 3; *see also* Sawicki Letter at 2; General Wireless Proposal.

<sup>15</sup> Barker Letter at 3.

from outside investors. Although General Wireless proposes a 15-year repayment term,<sup>16</sup> Fortunet believes that a 20-year term would better enable C-Block licensees to obtain sufficient funding to build out the network and provide services. Moreover, a 20-year term more accurately reflects general financing terms that are commercially available.

### 3. Modification of equity rules

The Commission also should modify the minimum equity rules to make them comparable to those imposed on licensees in the Wireless Communications Service (2.3 GHz) ("WCS").<sup>17</sup> General Wireless proposes to modify the minimum equity rules, but would still impose a 10 percent ownership limit.<sup>18</sup> Fortunet does not believe that the 10 percent floor is necessary, especially where the Commission has declined to impose such a floor with respect to WCS licensees. Additionally, both General Wireless and MCI propose raising the maximum equity that a non-attributable investor can possess to 49 percent and 37.5 percent, respectively. Once again, Fortunet believes that the WCS rules for determining attributable interest should be adopted for the C-Block, which would require that small business-principals maintain control of the licensee.

### 4. Easing of transfer restrictions on C-Block licenses

The Commission has recognized that "strict holding requirements [hamper] the ability of entrepreneurs to attract the capital necessary to construct and operate their systems."<sup>19</sup>

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<sup>16</sup> General Wireless Proposal.

<sup>17</sup> Barker Letter at 3.

<sup>18</sup> General Wireless Proposal.

<sup>19</sup> Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, WT Docket No. 96-59, FCC 96-278, at ¶ 84 (rel. June 24, 1996).

Fortunet proposes that the Commission permit transfer of a C-Block license to a “non-Entrepreneur” within the first five years if an “Entrepreneur” buyer cannot be found. The transfer would be subject to the following terms: (1) the installment debt would be paid at the time of the transfer, (2) half of the bidding credit recapture would be waived, and (3) the other half would be paid on the fifth anniversary of the grant. Easing transfer restrictions in this manner would help stimulate investment in the C-Block and help “ensure rapid and uninterrupted service to the public.”<sup>20</sup>

#### 5. Easing of foreign ownership restrictions

Finally, the Commission should allow more than 25% foreign equity in C-Block licensees.<sup>21</sup> Relief from foreign equity restrictions is necessary to promote investment in the C-Block. General Wireless has proposed that the Commission increase maximum foreign ownership levels to 90 percent.<sup>22</sup> However, allowing 100% foreign ownership would be more consistent with the recent World Trade Organization agreement on basic telecommunications services. The Commission should signal now its willingness to permit 100% foreign ownership so that C-Block licensees immediately can begin seeking new capital from foreign investors.

These proposals put forth by Fortunet, and supported by the record, would help make C-Block licensees more competitive in financial markets, which, in turn, will make them

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<sup>20</sup> *Id.* at ¶ 85.

<sup>21</sup> Barker Letter at 3.

<sup>22</sup> General Wireless Proposal.

more competitive in the PCS market.<sup>23</sup> Fortunet urges the Commission to adopt them in this proceeding.

#### **IV. PROPOSALS TO REDUCE PRINCIPAL AMOUNTS TO THE LEVEL OF THE A- AND B-BLOCKS**

Some parties have proposed to reduce the principal owed by C-Block licensees. Under these proposals, the price per pop for C-Block licenses would be brought in line with the price per pop paid by auction winners in the A- and B-Block.<sup>24</sup> Fortunet supports these proposals. However, solely reducing the principal owed will not necessarily provide C-Block licensees with the relief they need from having to make large interest payments prior to their systems generating cash flow or provide them with greater flexibility in raising capital. Fortunet therefore believes that any reduction in principal should be made in conjunction with the modifications Fortunet has proposed.

#### **V. THE COMMISSION SHOULD RETURN INSTALLMENT PAYMENTS SUBMITTED ON THE MARCH 21, 1997 DEADLINE**

The Bureau's decision to suspend the C-Block installment payment due on March 31, 1997, was released on that very day. Because of the timing of the Bureau's Order, Fortunet's predecessors in interest were not aware of the suspension of payments and dutifully paid their March 31 installments, while many other C-Block licensees who received notice of the suspension made no such payment. The Commission should rectify this arbitrary result by

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<sup>23</sup> In its letter, Fortunet also urged correction of the interest rate it pays under its obligation to the Commission. Fortunet, concurrently herewith, is filing comments in support of interest rate correction, which is being considered in a separate proceeding. See Comment Requested on 7 Percent Interest Rate Imposed on C Block Installment Payment Plan Notes: Waivers Requested by Broadband PCS C Block Licensees, *Public Notice*, DA 97-1152 (June 2, 1997).

<sup>24</sup> See, e.g., General Wireless Proposal.

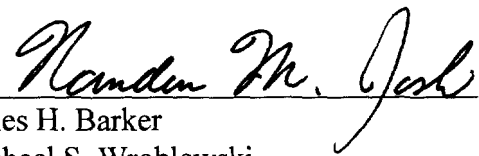
returning the March 31 installments, which will allow the money to be used by C-Block licensees to develop their PCS business. Indeed, simple fairness requires that the Commission place all C-Block licensees on an equal footing by granting these requests.

## **VI. CONCLUSION**

For the foregoing reasons, the Commission should restructure the financing terms of C-Block licenses, which would increase the competitiveness of the C-Block in financial markets and, ultimately, in the PCS market.

Respectfully submitted,

FORTUNET COMMUNICATIONS, L.P.

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CERTIFICATE OF SERVICE

I Nandan M. Joshi hereby certify that I have this 23rd day of June, 1997 caused copies of the foregoing "Comments of Fortunet Communications, L.P." to be served by hand on the following:

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